

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
 v.) CRIMINAL NO. 15-10010-PBS
)
JOHN TRAN,)
 Defendant.)

GOVERNMENT'S MEMORANDUM

Now comes the United States, by its attorneys, Carmen M. Ortiz, United States Attorney, and David G. Tobin, Assistant U.S. Attorney, and hereby provides this Honorable Court with information obtained from Federal Bureau of Investigation ["FBI"] Special Agent Daniel Alfin.

On December 14, 2016, during a hearing on Defendant's Motions to Suppress, Dismiss, and Compel Discovery [Docket Entries 45, 44, 43, respectively] an issue arose as to whether FBI Special Agent Alfin was aware that the Affidavit in Support of the Network Investigative Technique ["NIT"] warrant submitted to a magistrate judge in the Eastern District of Virginia contained an outdated description of the Playpen website's homepage. As this Court is aware, the submitted Affidavit described that "[b]etween September 16, 2014 and February 3, 2015" and again on "February 18, 2015," law enforcement officers accessing Playpen observed that the homepage contained a

sexually suggestive image of two minor females. It has subsequently been determined that on February 19, 2015, less than twenty-four hours before the NIT warrant was executed by the magistrate judge, the sexually suggestive image of two minor females was replaced with a sexually suggestive image of one minor female. The warrant was signed and executed by the affiant and the issuing magistrate on the morning of February 20, 2015.

The undersigned attorney for the United States spoke over the telephone today, December 15, 2016, with Special Agent Alfin in order to determine if, at the time the Affidavit was submitted to the magistrate judge on February 20, 2015, he was aware that it contained an outdated description of the images on the Playpen homepage.

Special Agent Alfin stated that prior to the submission of the Affidavit to the magistrate judge, he had not been aware that the image of two minor females on the homepage had been replaced with an image of one minor female. Special Agent Alfin further related that he and other law enforcement officers made entry into the residence of Steven Chase, the individual who operated the Playpen website, late on the evening of February 19, 2015. Mr. Chase was arrested and the computer from which he

administered the Playpen website, which was open and running at the time of the search, was accessed. Special Agent Alfin noticed that Chase's computer was logged-on to the Playpen website. According to Special Agent Alfin, although he looked at the Playpen homepage on the early morning of February 20, 2015, prior to leaving the Chase residence, he did not notice that the image of two minor females had been replaced with an image of one minor female. Only later did he learn that, just hours before law enforcement arrived at the Chase residence, the image of two minor females was replaced with an image of one minor female. Special Agent Alfin stated that had he been aware of the change to the homepage prior to the submission of the Affidavit later on February 20, 2015, he would have taken steps to ensure that the description of the homepage in the Affidavit was updated to reflect the change.

The undersigned notes that the Affidavit specified that "[b]etween September 16, 2014 and February 3, 2015" law enforcement accessed the website and observed that "[o]n the main page of the site, located to either side of the site name were two images depicting partially clothed prepubescent females..." See Affidavit in Support of Application for Search Warrant, at Docket No. 60, Exhibit A [NIT Warrant], paragraphs

11 and 12. The Affidavit also specified that the Affiant had accessed the website on February 18, 2015, and observed that "its content had not changed." See NIT Warrant, Paragraph 11, footnote 3. The Affidavit stated that between September 16, 2014 and February 3, 2015, the homepage contained an image of two minor females; and that on February 18, 2015, it continued to contain the same image of two minor females. The change to the images on the website homepage occurred on February 19, 2016. Accordingly, those statements in the warrant were factually accurate.

Respectfully submitted,

CARMEN M. ORTIZ
United States Attorney

By: /s/ David G. Tobin
DAVID G. TOBIN
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

/s/ David G. Tobin
DAVID G. TOBIN
Assistant United States Attorney

Date: December 15, 2016